

COMMENTS OF THE ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA
ON THE WHITE PAPER ON COPYRIGHT ENTITLED
FROM GUTENBERG TO TELIDON

TO THE SUBCOMMITTEE OF THE STANDING COMMITTEE ON COMMUNICATIONS
AND CULTURE ON THE REVISION OF COPYRIGHT OF THE HOUSE OF COMMONS

INTRODUCTION

The White Paper on Copyright invites comments on theoretical principles that will be considered in the revision of the Copyright legislation. Further and more specific comments may be required when those principles are translated into the text of proposed legislation, which, we understand, may be introduced in the Fall of 1985.

The concept of copyright and its protection under existing or proposed legislation is so wide that it affects virtually every aspect of Canadian life. Universities in Canada are affected by such legislation in a multitude of ways:

- . in the pursuit of their basic objective of the discovery and dissemination of knowledge;
- . in the critical function of analyzing, commenting on and participating in changes in our society;
- . in the transmission of knowledge through education and training;
- . and in community activities.

Universities promote, encourage and expect their academic staff to produce intellectual properties, not for monetary gain but to advance knowledge through its widest dissemination where it will be tested through criticism, built upon and become a part of the repository of knowledge and

culture from which our present generation and future generations will build the society in which we live. Universities are extremely complex institutions which, in the pursuit of educational and research objectives, produce diversified works, the dissemination of which is controlled by copyright legislation. These works are produced not only for the advancement of institutional objectives and of the creators themselves but also for the betterment of society as a whole.

Universities through their staff and students, are also very important consumers of intellectual properties in the development and transmission of knowledge. In 1982-83, expenditures in Canadian universities for university library materials amounted to approximately \$69.7 million. In addition, students of all categories invested substantial amounts in the acquisition of a variety of intellectual tools required for the pursuit of education.

FACTORS AFFECTING FUTURE COPYRIGHT POLICIES

Canada and the developed world are experiencing three major upheavals which influence the proposals contained in the White Paper. Firstly, the technological revolution not only makes it easy to reproduce artistic and literary works but also provides for a very rapid change in societal and economic values where Canada can benefit as a developer and/or a consumer of that technology. The ease of access to material now protected by copyright or proposed to be included under the copyright law is essential if Canada is to become an efficient competitor rather than a consumer of foreign developed technology. Secondly, Canada's present reliance on natural resources for a large section of its economy may require serious review as this country faces international competition and reduced demand for those resources. Our country has a vast and important intellectual resource which must be promoted, not only for internal consumption, but

also for export as a possible means of diversifying our economic base. Finally, our citizens will have more and more leisure time as the work-week is shortened and pressures increase to reduce time spent in work related activities. How these leisure hours will be occupied is probably directly related to the ready availability of intellectual and cultural material.

The statutory protection of private rights through the grant of a monopoly involves the interests of society as a whole since it is society that ultimately is the beneficiary, not only of the creation, but also of the increased knowledge created by its users. The White Paper states that "throughout the revision process, the government has given particular consideration to producing a revised Act that strikes a fair balance between creators and users" (page 1). While it is important to protect the integrity of the creator and to ensure a reasonable financial return and adequate recognition for the creative effort, reasonable access to the creation must not be inhibited so that society may benefit from the widest possible access to a valuable national resource. The revision process must not lose sight of the overriding interests of the Canadian and international society in the benefits that result from intellectual creation.

It can be presumed, however, that the costs of extended copyright protection will be borne by the users and the pass-through of costs may result in a reduced use of literary and artistic creation rather than an increase in economic benefits to the creators and their assigns. The resources available to students and researchers may not increase and extended copyright protection may result in a selective use of intellectual property affordable within available resources. Reduced exposure to intellectual property by students and the reduction of efficiency resulting from the use of alternative methods can only have a negative impact on the cultural and intellectual pursuits of education. Admittedly, this does not militate against equity for the creator. It does, however, reflect upon the need to ensure a true balance between the legitimate rights of owners of intellectual property and the legitimate expectations of society.

SUBJECT MATTER OF COPYRIGHT PROTECTION

The present legislation protects any literary, dramatic, musical or artistic work. The definitions are extremely broad and encompass all writings, works of harmony and/or melody graphically reproduced, including any mechanical reproduction of sound, and artistic works including paintings, drawings, sculptures, craftsmanship, architectural drawings, engravings and photographs. These are all protected works providing they are original and fixed in a material form.

The White Paper proposals would extend copyright protection to computer programs, computerized information storage and retrieval systems and to prevent unauthorized recordings of performances for commercial gain.

Definition of Works to be Protected

An immediate problem with the existing copyright legislation and any proposed revision is that, although broad categories of protected works are defined in the existing legislation, there lacks a clear definition of works that are capable of copyright protection. Copyright protection too often is discussed in terms of very successful cultural creations. The Act, however, protects many works that were not created with the intent that they fall within the ambit of copyright protection. The intent at the time of creation could be used as a viable means of identifying those creations that are worthy of protection and such intent should be evidenced by registration.

Moral Rights

In terms of the protection of moral rights of the creator, it may be stated, at the outset, that the university community recognizes the right of a creator to claim authorship in a work as evidenced by the fact that

plagiarism is considered as a major academic offence. One must, however, accept that when a creator invites the public to share in the creation, this Act also invites the public to identify the creator with the creation. Anonymity of the creator is better left to contractual arrangements than to the absolute protections of copyright legislation.

The "right of integrity" is also a valuable right but should be tempered to allow the creation of parodies, themselves a form of culture, providing they are clearly identifiable as such.

Furthermore, the prohibition against the distortion, mutilation or modification of unique artistic works without proof of prejudice to the creator's honour or reputation implies underlying effects that may not have been fully assessed. If such a concept is retained, it should be limited to works of proven cultural or artistic value and should not extend to all protected artistic works. The owner of the physical representation of an artistic work should not be inhibited in his ability to dispose of his property. If the objective pursued is to protect our cultural and artistic heritage, we suggest that the objective is better met through specific legislation in pursuit of that aim.

Economic Rights

The protection of economic rights raises a more complex issue. No doubt creators are entitled to an equitable economic return for the investment of time, effort and creativity involved in a literary, dramatic, musical or artistic work. There are, however, a number of circumstances under which works now protected by copyright were not created with a view to future economic returns. As an example, many works are produced in an employment relationship where the creator produces for salary and continued employment. Scholarship and its production reflected in intellectual properties in all its forms is basic to the academic vocation of

universities and is recognized in the salaries and benefits paid. Recognition to the creator reflects itself in tenure, promotion, continued appointment and, where warranted, accelerated salary increments. The Canadian public makes a sizeable investment in those creations and any inhibition to the widest possible dissemination of them defeats the very purpose of their creation. While moral rights should be recognized in this and all other situations, the recognition of economic rights may inhibit the attainment of the objective underlying the creation of the work.

We are not unmindful of the proposals of the White Paper that copyright registration be done away with and we will return to this issue. At this point, it is sufficient to state that registration of copyright should be maintained and expanded. The recognition of economic rights should be subject to registration of those rights within a reasonable time following the creation of the work or its publication as the case may be. In this way, the creator indicates his/her economic claim. It is certainly not unreasonable to expect that the creator whose object is to seek an economic return should be required to notify potential users of that intention through the registration of the claim to property as is required for other property rights in the law of Canada and more specifically for inventions, trademarks and industrial designs. The registration should have been effective by the time of the infringement except in cases of voluntary and intentional plagiarism. Such an approach could be argued to be consistent with Canada's international obligations and would approximate the approach taken in U.S. legislation. In making this proposal, we draw attention to the inexpensive alternative provided for in Article III of the Universal Copyright Convention, Geneva, text of September 1952 where the use of the symbol © accompanied by the name of the Copyright proprietor and date of first publication stands "in lieu" of registration formalities.

Furthermore, it may not be unreasonable, in a substantial revision of Canada's copyright legislation, to consider that Canadian publications, mainly journals and periodicals, be required to advise its users as to whether they claim or disclaim the protection of that copyright legislation.

The White Paper invites comments on the "droit de suite", a right which would allow the creator to share in the proceeds of re-sale of artistic works. The issue is not of particular concern to the university community where acquired works of art are seldom disposed for a "profit". It should, however, be considered that sharing not be limited to profits but might also apply to losses if one recognizes a common interest in the worth of a work of art by the creator and the owner of the physical representation of the work.

LIMITATION ON RIGHTS

Copyright ownership includes the absolute right to limit or even prohibit access. The protection offered by the existing and the proposed legislation creates a monopoly for the owner. Existing competition and monopoly legislation does not apply to a claim to ownership of property.

Control of the Monopoly of Copyright

We submit that it is inherent in the creation of a monopoly that revenues or royalty rights be controlled by the authority granting the monopoly. It is also inherent in a monopoly that the holder thereof is required to have a sufficient supply to meet the needs of the consumer. This issue is addressed through compulsory licencing in the Patent Act, a limited protection in the Industrial Designs Act and the loss of protection

through the failure to use in the Trademark Act. The cultural and intellectual values represented in the works protected by copyright are crucial to the society we live in. Copyright should also be the subject of compulsory licencing on terms and conditions similar to those contained in the Patent Act. Such an approach will justify the longer term of protection offered by copyright legislation, ensure an equitable return to the creator and set financial obligations through an independent tribunal such as the Copyright Appeal Board. The issue here is not so much one of cost but one of accessibility which can be clearly illustrated by three examples. First, if a literary work is available only in a distant library which, for whatever reason cannot transmit the original to the user, it is unrealistic to expect that the user pay travel costs to access the work. Second, if a limited number of copies of a work are required for classroom or research purposes and particularly if the work is no longer in print or readily available, it should be capable of reproduction by the educational institution at a minimal return to the copyright owners. Third, where only a part of a literary work is required for instructional purposes, its reproduction as part of a casebook or anthology should be authorized so as to avoid the requirement that students purchase expensive libraries. The right to extract for educational purposes, as determined by national legislation, is protected in Article 10 of the Revised Berne Convention to which Canada adheres. (Schedule III to the Copyright Act).

Compulsory licencing, defined as a licence to use a work protected by copyright without the consent of the owner but under terms and conditions to be set by a competent independent authority including the royalty fee to be paid by the user, should be allowed on a speedy application to the Copyright Appeal Board. It should apply to any published work which is not readily available or available at a reasonable price for instructional or research purposes and for unpublished works at any time after the death of the creator. If the use postdates the death of the creator, the royalties should be paid during the life of copyright protection to the heirs or assigns of the creator.

FAIR DEALING OR FAIR USE

The proposal to replace fair dealing with fair use suffers from the same uncertainty as the existing provisions of the Copyright Act. The proposal still leaves it to a litigation process to determine what, in any instance, amounts to unauthorized or authorized use. We suggest that any use of material subject to copyright be permitted for the purposes of study, research, criticism or review where the reproduction does not affect the moral rights of creators, is made for ease or convenience of the student or researcher, and does not reasonably constitute an attempt to avoid the payment of a reasonable royalty to the owner of the copyrighted work. Such a definition would reduce the need for costly litigation to settle the definition of "fair use" or "fair dealing".

REPROGRAPHY

The White Paper proposes that reproduction, through reprography, will continue to be an infringement of copyright. The issue is to be dealt with through the creation of cooperative societies and the issuance of blanket licences. The creation of cooperative societies will be commented upon later but one must raise at this point the continued prohibition of reprography unless it is licenced or constitutes "fair use". It is unfortunate that one of the factors militating in favor of renewed copyright legislation, the technological innovations that make it easier to reproduce by reprography works otherwise protected by copyright, is not really addressed in the White Paper.

Many studies, including "The Impact of Reprography on the Copyright System" authored by S.J. Liebowitz in the Copyright Revision Studies of Consumer and Corporate Affairs Canada lead to the following conclusions:

1. much of the material photocopied in academic libraries in Canada involves works of foreign creators. Any recovery of royalties on such an activity will result in a substantial portion of royalties being paid to foreign creators because of Canada's international reciprocity obligations;
2. multiple copies are made infrequently and relatively small portions of books or a periodical are involved in any single event;
3. journals are copied more than books, and, in the period of increased facility for reprography, the journal industry does not appear to have suffered;
4. price discrimination already practiced by journal publishers appears to be a reasonable and efficient means of compensating creators and copyright owners for the photocopying that now occurs in academic libraries.

A study conducted in 1971 by B. Stuart-Stubbs concludes that only 28% of photocopied material in university libraries is of Canadian origin. Only 7.2% of the total sample of photocopies of copyrighted materials originated from Canadian books and 5.3% from Canadian periodicals. Of the total sample, 47.5% of all material copies was six years or older.

All of these studies must of necessity raise a question as to whether or not the advent of reprography is a major problem in terms of the equitable revenues that Canadian creators are entitled to expect from their works. We suggest that the legislative revision be governed by the conclusion arrived at in the Liebowitz study, namely that price discrimination to institutional purchasers is a viable means of compensating creators for reprography of their works in educational

institutions providing that the practice is subject to approval of the Copyright Appeal Board as the reasonableness of the differential. If the proposals concerning reprography outlined in the White Paper are accepted, it must be expected that price discrimination practices should be prohibited, the effect of which may mean very limited access to foreign publications by Canadian institutions. Furthermore, whether reprography is to be compensated through price discrimination or blanket licencing, there should be no limit on the number of pieces of reprographic equipment or the number of copies made once the user has paid the price for the right to reproduce by reprographic methods, providing that the reprography is not used for commercial or business gain.

In this area, it is important to note that the proposed legislation should not embark the system into an impossible mission which invites a breach of the law with the knowledge that the ability to enforce is virtually impossible.

Educational Exemption

If the comments contained in this paper are accepted, there is little need for further comment on an educational exemption as proposed in the White Paper. One need only remark that the very proposed restricted educational exemption would regrettably limit the ability of institutions to expose their students to intellectual and cultural resources without adding to the financial burden of the students or seeking additional sources of financing. In an attempt to strike a balance among the competing interests, it must be remembered that the activities of postsecondary institutions promote the market of intellectual property, and as well prepare the users that will become that market. Furthermore, there exists no empirical evidence that the present section 17(2) and (3) has a negative impact on the revenues of copyright owners. Studies such as those referred to in the Liebowitz paper may well dispel prevailing perceptions.

Article 10 of the Revised Berne Convention signed at Rome in 1928 (Schedule III to the Copyright Act) provides that the educational exemption to extract portions of literary or artistic works is left to national legislation. We submit that it would be most unfortunate if the laws of Canada restricted Canadian access to education.

Educational Broadcast

The White Paper proposes that no broad exemption be made for educational broadcast or cable diffusion. A limited exemption is proposed for programs originating in and received within a building. We understand this very limited exemption to be interpreted in the light of the limited educational exemption to copy for examination purposes only and the fair use exemption with its unclear definition.

Such a proposal is inconsistent with reality and social policies. The reality is that universities and other postsecondary institutions are large and complex structures involving many buildings, often multiple campuses, and in many cases transmission of educational offerings to students' homes. The origination of an educational broadcast is seldom limited to the building where it is intended to be received quite to the contrary it is often designed to link distant or satellite teaching centres to the central campus. Similarly, the social policies of Canada promote access to education without barriers deriving from socio-economic or geographical factors. Distance education accessible to those persons who cannot readily attend at an established teaching centre, bringing culture and continuing education to remote areas should not be inhibited or available only at an increased cost to those populations.

It must be remembered that any exemption in the area of education is for the benefit of those who are served by the educational institutions and not for the benefit of the institutions themselves.

Ephemeral Recordings by Universities

Cultural, news and scientific broadcasts do not always occur at a time which is convenient to the audience and this is so for postsecondary students who are expected to follow lecture, research and study schedules that are not limited to the normal workday. Postsecondary institutions should be allowed to make ephemeral recording of cultural broadcasts for instructional purposes providing that such copies be used for limited re-broadcasting and that they be destroyed within a reasonable time after recording.

The Freedom to Analyse and Report

The White Paper proposes an "explicit exemption allowing the press to carry on its necessary reporting and analysis functions" (page 49). The press is not the only Canadian institution which function is to analyse and report upon the intellectual activities which invariably are expressed in a work or works protected by Copyright legislation. Universities are particularly suited for this function given the prime role of research and publication within the universities, and should also benefit from a parallel exemption. In fact, similar consideration should be afforded to a number of other establishments such as research institutes.

Architectural Works of Art

As an illustration of the wide-ranging effects of copyright protection on matters of interest to universities, the university community has a real and important interest in the White Paper proposal on architectural copyright. In order to meet societal demands and expanding knowledge, universities must be capable of expanding their buildings, of altering the interior structures and maintaining them without the necessity

of constantly returning to the original architect or his heirs and assigns. We submit that an exemption should be made to allow that plans be capable of copy for the renovation of architectural works, for purposes of maintenance and reconstruction of the internal and external portions of the building.

We realize that such plans are possibly protected without limitation by existing legislation but we suggest that the proposed limitation to the protection is insufficient. Furthermore, if unconsented to modifications to artistic works invites infringement liability without proof of prejudice to the honour or reputation of the creator, the building owner's ability to adapt buildings to changing circumstances is very much inhibited.

We sympathize with any attempt to protect Canada's architectural and cultural heritage but such a pursuit is better achieved through heritage and cultural legislation rather than Copyright legislation.

COPYRIGHT SOCIETIES

The university community welcomes the proposed creation of copyright societies modelled on the performing rights societies for musical works. The ability of such societies to licence the use of copyright protected works will, if successful, amount to a sizeable advance in the clarification of the use of such works. The success of this mechanism must, however, be predicated on the following considerations:

1. there must be no more than one society for each type of copyright protected works such as one for literary works, one for dramatic works, one for works of art. The existence of multiple societies responsible for a large number of works in the same field would result in payment of multiple licenses, the costs of which are not related

to use of the material, but rather to the sheer inability to ascertain under the control of which society the protected material falls. In this latter event, the payment of licences closely approximates a cultural tax rather than payment of a royalty for use;

2. subscribing to such a society should be compulsory for the enforcement of economic rights rather than permissive. The purchasers and users of blanket licences must be assured of the permission which they obtain and pay for. If assignment by the creator to such a society is permissive, then the protection of the licence becomes uncertain and this uncertainty is further aggravated when one considers non-Canadian material;
3. because recognition of such societies amounts to the granting of a monopoly, their powers and price structures must be subjected to the supervision and control of a revised Copyright Appeal Board.

The Copyright Appeal Board should be revised to include jurisdiction not only as a supervisor of copyright societies but to include broader powers of supervision and control of the monopoly of copyright. To be effective and credible, a revised Board must function as an independent tribunal and its composition should be modelled on that of other administrative tribunals. Interested constituencies should not be represented on a tribunal.

REMEDIES FOR INFRINGEMENT

Strict liability implies that the action itself attracts liability whether or not it was innocent. It is a penal concept vastly different

from the concept of presumptions in civil liability. The need to adopt a rule of strict liability in the area of copyright infringement is doubtful. A rule of strict liability should be adopted only in very restricted circumstances, where the need to protect the public overrides the usual rule of law that liability and penalty attaches only to culpable conduct. Obviously, the burden of proof where the infringement is flagrant plagiarism will be a light one for the plaintiff to meet. The White Paper, however, would impose strict liability in a field where the alleged infringer is often unable to verify whether or not the activity is culpable.

We reiterate our suggestion that registration of the right and its assignment be a condition to the enforcement of economic rights and that such registration, easily accessible for search purposes, can be considered knowledge to the world of the contents of the registration. Such a mechanism would reach the objectives sought by the introduction of strict liability for those creators, owners and assigns who protect their property rights. It also would be consistent with the traditional protection of intellectual property rights such as patents, trademarks and industrial design. It would not be unreasonable also to expect that one who claims a proprietary interest should take a positive step to advise the public of the assertion of that claim.

The White Paper proposes that the plaintiff in a copyright action be presumed to have the right to sue unless the defendant obtains leave to challenge that right prior to trial. Such a presumption is unfair in the absence of a registration requirement since all of the facts which would permit a challenge to the right to sue are, in the absence of a verifiable registration, wholly within the knowledge of the plaintiff, including the circumstances heading to the creation and the assignment of any rights thereto. The present remedies in the Copyright Act for innocent infringement appear sufficient when, as currently exists, some presumptions are attached to the fact of registration of the copyright.

Copyright protection involves the recognition and protection of private rights and as such is a part of the body civil laws of Canada. Care must be taken to ensure that Copyright legislation does not assume rights and remedies that are better dealt with by existing civil laws such as defamation. Similarly, the theft of a property is better dealt with in our penal laws and civil remedies of tort laws.

Criminal offences and sanctions for copyright infringement should be left to those penalties and sanctions provided for in the Criminal Code of Canada. If it is felt crucial that criminal liability be included in the proposed legislation then care must be taken to ensure that such penalties and sanctions do not exceed the provisions of the Criminal Code for various infractions to property rights. The White paper is unclear on the extent of penalties which the proposed legislation would envisage.

CROWN COPYRIGHT

Any document or work which is a part of the operations of government must, in a democratic society, be widely accessible to its citizens. That social policy is enshrined in our access to information legislation. The monopoly of copyright should not be available to governments to restrict access to the workings of government. Where overriding considerations prevail and secrecy or confidentiality is required, then those considerations should be reflected in secrecy legislation. The proposal that access to government documents be defined purely in policy guidelines is unrealistic, open to abuse and can be altered without public debate. The need to recapture an expenditure of public funds through copyright protection implies that the citizens of Canada are called upon to pay twice for the same works, once when they have funded the creation and a second time when they try to acquire it.

We submit that Crown copyright must be abolished. At the very least, those documents which are fundamental to the exercise of a democracy, such as legislative texts and judicial decisions, including all the documents preparatory to or surrounding the creation of these texts (position papers, debates, transcripts of evidence, legislative journals, etc...), should be immediately part of the public domain.

COMPUTER PROGRAMS

It is of vital importance to protect the financial and intellectual investment involved in the creation of computer software. It is also of vital importance that society have the ability to innovate and build upon that software if it is to be a part of the technological revolution. The use of copyright legislation may not be the most viable vehicle for the protection of that form of intellectual property.

We respectfully request the right to further study this issue and submit comments at a later date.

EMPLOYEE COPYRIGHTS

The White Paper raises, for discussion purposes, the ownership of copyright to creations of employees. The arguments raised in Appendix II favoring the maintenance of the present copyright provisions are, we submit, compelling and irrefutable.

Protected works are a wide variety of expressions of intellectual creations. Unlike other forms of intellectual properties which are more specific, copyright protected works do include inter-office memos, correspondence and reports. An inversion of the onus as to ownership of

copyright from the existing legislation merely implies that employers must do all that is within their powers to acquire copyrights at the time of employment. We submit that the issue is a distraction from the main objectives of copyright revision and is not worthy of extensive discussion since the subject is better left to employment contractual negotiations. The fact remains that employees are paid to perform and the result of the performance belongs to the investor, the employer or the corporate owners, unless otherwise agreed to in the contract of employment. The White Paper in its discussion highlights this fact by arguing different considerations for Crown employees as though they were a different kind of employee.

CONCLUSION

Any review of copyright legislation must at all times give careful consideration to the following principles:

- access to culture and knowledge is fundamental to the development of Canada's intellectual resources and any legislation that inhibits or restricts that access for economic or other reasons severely impairs Canada's ability to compete in the international cultural and intellectual market;
- because of international reciprocity, attempts to confer economic benefits on creators within Canada will likely result in a larger part of those economic benefits finding their way to foreign creators unless there are reciprocal transfers of benefits from those countries who do not recognize as extensive protection as the Canadian legislation;

- creators are entitled to equitable returns for the commercial exploitation of their creations and to personal recognition for their work. Much of the present state of copyright is, however, the result of contractual relationships rather than the effect of the legislation. Seeking greater protection through legislation may not alter the relative bargaining powers and as a result creators may still be required to abandon their rights by contract so that the limitations of new legislation will only affect users rather than benefit creators;
- the grant of a monopoly requires state supervision and control which can best be exercised by an independent administrative tribunal with expanded jurisdiction and capable of settling on an individual basis the interests of the creator, the assignee, the user and society.

The following is a summary of the recommendations which we impress upon the Committee:

1. any revision of copyright legislation must first place emphasis upon the rights of the Canadian society before it attempts to strike a balance between the private rights of creators, owners and users;
2. the application of copyright protection to any material should be determined by the creator's intent to protect a property interest as evidenced by the compulsory registration requirements to enforce economic rights;
3. moral rights should be enforced regardless of registration. However, one's option to enter one's intellectual production in the public arena invokes the public's rights to identify the author or creator. The

moral right to protect works from mutilation, destruction or modification should be governed by cultural and heritage protection legislation;

4. copyright is a monopoly that should, like all other monopolies, be subject to the supervision and control of an independent tribunal such as a revised Copyright Appeal Board;
5. the development and the dissemination of cultural creations is so fundamental to Canadian society that a compulsory licencing feature of works that are not readily available at a reasonable price should be included in any legislative review where the works are not readily available at a reasonable price. Compulsory licencing should be available through a speedy procedure before a revised Copyright Appeal Board;
6. what constitutes fair use should not be left to a post-event litigious process but should be clearly defined in the proposed legislation;
7. before the rights of reprography are established, further and better evidence of the economic effect on Copyright owners should be carried on. As an alternative, any royalty fee imposable or reprography should be subjected to the mathematical determination of the negative effect of reprography on the economic return of Canadian copyright owners;
8. exemptions to educational institutions must recognize that the institution is not only a substantial user but also creates a demand for the use of copyright protected

works. Any attempt to restrict use by educational institutions results in:

- a) a negative effect on the development of the resources of Canada;
 - b) a restriction on the use of the cultural and intellectual resources of Canada in the development of an intellectually prepared citizenry;
9. copyright societies are a welcomed innovation providing that the product purchased in obtaining a licence is known or readily ascertainable and constitutes a royalty payment to ensure against litigation from a non-ascertainable right;
 10. copyright legislation should not be an alternative to or an addition to liabilities incurred through the general civil and penal laws of Canada. Some subjects considered by the White Paper are better left to the existing laws governing these issues such as defamation and theft;
 11. Crown copyright should be abolished to ensure wise access to government documents, consistent with access to information legislation;
 12. the presumption of ownership in the employer of employee created copyrights should not be altered in any revision of the existing copyright legislation.